

**RESOLUTION NO.**

**Late Backup**

**WHEREAS**, the City Council established the Planning Commission by ordinance in 1945, and since that time the Commission has been tasked with performing significant and complex regulatory functions on behalf of the City of Austin; and

**WHEREAS**, these vital functions include acting as the City's "zoning commission" in accordance with Chapter 211 of the Texas Local Government Code, which mandates that the Commission provide reports to the City Council on proposed changes to the City's zoning ordinances; and

**WHEREAS**, the Planning Commission also acts as the sovereign body responsible for approving subdivision plats under Chapter 212 of the Texas Local Government Code and various administrative decisions relating to water quality, drainage, and other development regulations; and

**WHEREAS**, in addition to its enabling authority under state law, the Planning Commission is subject to Article X of the Austin City Charter, which sets forth additional responsibilities and functions as well as membership and operational requirements; and

**WHEREAS**, ~~among other requirements~~, Art. X § 2 of the charter, approved by 67% of Austin voters in 1994, requires that "a minimum of two thirds of [the Planning Commission] shall be lay members not directly or indirectly connected with real estate and land development"; and

**WHEREAS**, Art. X § 2 was added to the charter in 1994 in response to ~~concerns~~ in order to ensure that developers, real estate speculators, and those connected with real estate and land development, ~~in any capacity~~, such as real estate lawyers, engineers and architects, ~~exerted too much~~ did not exert undue influence

over land use planning and zoning decisions; and

**WHEREAS**, the City Council believes that ~~clearer criteria are necessary and desirable to~~ this resolution will ensure that future appointments comply with the Art. X § 2 of the City Charter; **NOW THEREFORE**,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

1. **Finding.** Council finds that, this resolution is needed in order to effectuate the charter's preventative conflicts purpose, ~~the limitation in Art. X § 2 must be interpreted broadly to~~ which is to broadly include professionals with any direct or indirect include individuals with any meaningful relationship to either real estate or land development. This includes not only builders, financiers, or real estate agents, but also ~~design~~ architects, engineers, lawyers and other professionals ~~or others~~ who work in association with developers or real estate agents.
2. **Criteria for Applying Charter Requirements to Planning Commission Appointments.**
  - (A) At least nine members of the Planning Commission must be “lay members not directly or indirectly connected with real estate and land development,” as ~~determined under Subsection (B).~~ If membership of the Commission includes more than four members who do not satisfy the criteria under Subsection (B), no additional members who do not meet those criteria may be appointed and the last members appointed that exceed the threshold shall be removed as set out in Section 3.
  - (B) An individual is deemed to be a “lay [member] not directly or indirectly connected with real estate and land development” if:
    - (i) The person is not a licensed attorney, architect or engineer practicing in a field related to real estate or land development;
    - (ii) The person does not derive substantial income, defined as receiving

funds during the previous 12 months or the previous calendar year equal to or exceeding \$5,000 in salary, bonuses, commissions or professional fees or \$20,000 in payment for goods, products or nonprofessional services, or 10 percent of the person's gross income during that period, whichever is less, from:

- (a) a professional certification in ~~Architecture~~, Construction, Design, Real Estate, or a related field; or
  - (b) ownership of real property, other than a primary homestead; and
  - (iii) The person is not actively engaged in ~~building~~ land development projects, whether as a general contractor, subcontractor, financier, or in any other capacity, but excluding employees or independent contractors working solely in construction trades or work performed on a person's homestead.
- (C) The criteria established in Subsection (B) apply only to activity or property within the City's planning jurisdiction.

**3. Administrative Requirements.**

- (A) The City Manager, in consultation with the City Clerk and the City Auditor, is directed to provide a questionnaire for applicants to open positions on the Planning Commission designed to assist the Council in determining whether an individual is "directly or indirectly connected with real estate and land development" (under the criteria established in Section 2 of this resolution.
- (B) The City Manager is directed to begin requiring completion of the questionnaire for subsequent applications for appointment or reappointment to the Planning Commission.
- (C) Before the Council may appoint a Planning Commissioner nominee, the City's Auditor shall provide a recommendation, based on the evidence and criteria in

Section 2, whether the nominee is a lay person connected directly or indirectly to real estate and land development, and whether their appointment would exceed the 1/3<sup>rd</sup> threshold. The City Auditor's recommendation shall be provided two weeks in advance of the vote on the nomination.

- (D) After June 1<sup>st</sup>, 2018, if a complaint is filed, the City Auditor also shall apply Section 2's criteria to existing Planning Commissioners, and if the Auditor determines the 1/3<sup>rd</sup> threshold has been exceeded, then those Commissioners, shall be automatically removed on a last-in-first-out basis. In circumstances where multiple ineligible Commissioners have the same appointment date then, those Commissioners shall draw lots until the 1/3<sup>rd</sup> threshold is not exceeded. Commissioners automatically removed shall be ineligible to vote on Commission items.

**ADOPTED:** \_\_\_\_\_, 2018    **ATTEST:** \_\_\_\_\_  
Jannette S. Goodall  
City Clerk